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12 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 ORLO J. AMOS,

18 Defendant.

No. CR-08-0087-RHW

**ORDER STRIKING MOTION
FOR RECONSIDERATION**

19 On March 13, 2012, the Court denied the Defendant's Motion for Sentence
20 Reduction brought under 18 U.S.C. § 3582(c)(2). Nearly two weeks later, on March
21 26, 2012, the Defendant simultaneously filed: (1) a motion for reconsideration with
22 this Court; and (2) a notice of appeal to the Ninth Circuit. (ECF Nos. [116](#) & [117](#)).

23 A notice of appeal divests the district court in which it is lodged of jurisdiction
24 to hear the matter. United Nat. Ins. Co. v. R&D Latex Corp., 242 F.3d 1102, 1109 (9th
25 Cir. 2001). The federal appellate rules provide an exception, however, for "pending"
26 reconsideration motions filed prior to the lodging of the notice. FED. R. APP. PRO.
27 4(a)(4)(B)(i). But here the Defendant filed his motion and notice simultaneously, and
28 thus the motion was not "pending," under Rule 4(a)(4)(B)(i), at the time the notice

1 was lodged. *See* ConocoPhillips Co. v. Milestone Pacific Prop., LLC, 2010 WL
2 4608223, *2 (N.D. Cal. 2010).

3 Therefore this Court is without jurisdiction to rule on the motion for
4 reconsideration (ECF No. [116](#)), and it is **STRICKEN**. The Clerk is directed to
5 forward a copy of the motion to the Ninth Circuit.

6 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
7 order and to provide copies to counsel and the U.S. Probation Office.

8 **DATED** this 27th day of April, 2012.

9
10 *s/Robert H. Whaley*
11 **ROBERT H. WHALEY**
United States District Judge
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